

United States
Circuit Court of Appeals

For the Ninth Circuit. 4

CO-OPERATIVE OIL ASSOCIATION, INC., an
association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

FILED

FEB - 6 1940

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

J. L. EBERLE, Esq.,

WALTER GRIFFITHS, Esq.

For Comm'r.:

H. R. HORROW, Esq.

Docket No. 94580

CO-OPERATIVE OIL ASSOCIATION, INC., an
association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1938

- Jul. 2—Petition received and filed. Taxpayer notified. (Fee paid)
- “ 2—Copy of petition served on General Counsel.
- “ 2—Motion for circuit hearing at Boise, Idaho; Portland, Oregon or Salt Lake City, Utah, filed by taxpayer. 7/2/38 copy served.

1938

Aug. 9—Answer filed by General Counsel.

“ 11—Copy of answer served on taxpayer. Salt Lake City, Utah.

Sep. 1—Hearing set beginning Nov. 7, 1938 at Salt Lake City, Utah.

“ 12—Notice of appearance of J. L. Eberle as counsel for taxpayer filed.

“ 26—Notice of appearance of Walter Griffiths as counsel for taxpayer filed.

Nov. 7—Hearing had before Mr. Van Fossan on merits. Submitted. (Idaho cooperative marketing act filed) Petitioner's Brief due 12/7/38. Respondent's due 1/7/39—reply 1/22/39.

“ 23—Transcript of hearing of Nov. 7, 1938 filed.

Dec. 6—Brief filed by taxpayer. 12/6/38 copy served.

1939

Jan. 5—Brief filed by General Counsel.

“ 23—Reply brief filed by taxpayer. 1/24/39 copy served.

Jul. 7—Memorandum findings of fact and opinion rendered, Mr. Van Fossan, Div. 9. Decision will be entered for respondent.

“ 10—Decision entered, Mr. Van Fossan, Div. 9.

Oct. 5—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

“ 9—Proof of service filed with affidavit of mailing attached.

1939

- Nov. 14—Order from the 9th Circuit enlarging the time to December 20, 1939 to transmit and deliver record filed.
- “ 24—Statement of evidence lodged.
- “ 24—Agreed praecipe filed with proof of service thereon.
- “ 27—Stipulation re approval of statement of evidence filed.
- “ 28—Statement of evidence approved and ordered filed. [1*]

United States Board of Tax Appeals

Docket No. 94580

CO-OPERATIVE OIL ASSOCIATION, INC., an
association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice

*Page numbering appearing at foot of page of original certified Transcript of Record.

of Deficiency (IT:E:4 HAK—90D) dated April 5, 1938, and as a basis of its proceedings alleges as follows:

1. That the Petitioner, Co-operative Oil Association, Inc., at all times herein mentioned was and now is a nonprofit cooperative marketing association, organized and existing under and by virtue of the Cooperative Marketing Act of the State of Idaho, with its principal office and place of business at Caldwell, in the County of Canyon, State of Idaho, and the returns for the periods involved herein were filed with the Collector of Internal Revenue at Boise, Idaho, as follows: Return for the period December [2] 31, 1933 to October 31, 1934, filed on the 14th day of March, 1935; for the period October 31, 1934 to October 31, 1935, filed on the 14th day of January, 1936.

2. The Notice of Deficiency above mentioned, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof as if fully set forth at length herein, was mailed to the Petitioner on the 5th day of April, 1938.

3. The taxes in controversy are Income and Excess Profits Taxes for the taxable year January 1, 1934, to October 31, 1934, and the taxable year ended October 31, 1935, as follows:

Deficiency tax liability for taxable year January 1, 1934, to October 31, 1934, \$1,065.25 and deficiency Excess Profits tax liability for same period, \$487.36, making a total of \$1,452.61.

Tax liability for taxable year October 31, 1934, to October 31, 1935, \$1,696.33, and deficiency Excess Profits tax liability for same period, \$618.39, making a total of \$2,314.72.

Accordingly the amount of said deficiency Income Tax liability is \$2,761.58, and said Excess profits tax liability is \$1,005.75.

4. The determination of tax, set forth in said Notice of Deficiency is based upon the following errors: [3]

(a) That the Commissioner erred in disallowing the deduction made by Petitioner for the taxable year January 1, 1934, to October 31, 1934, for patronage dividends in the sum of \$6,872.68.

(b) That the Commissioner erred in disallowing the deduction made by Petitioner for the taxable year October 31, 1934, to October 31, 1935, for patronage dividends in the sum of \$11,147.30.

(c) That the Commissioner erred in finding and holding that there was nothing in Petitioner's Articles of Incorporation, By-laws, marketing agreement and in the Cooperative Marketing Act of the State of Idaho which would cause the patronage dividends disallowed by said Commissioner to accrue as such, without corporate action setting them apart as a liability of Petitioner to its members.

(d) That the Commissioner erred in holding that deductions for patronage dividends by this Petitioner should be limited to amounts which were declared or paid during the taxable year.

(e) That the Commissioner erred in not holding, finding and determining that under, pursuant to, and by virtue of the Cooperative Marketing Act of the State of Idaho and the Articles of Incorporation and the By-Laws of Petitioner, and the Membership Agreement between Petitioner and its members, the items disallowed [4] by said Commissioner, as hereinbefore mentioned, for patronage dividends in the sum of \$6,872.68 for the taxable year ended October 31, 1934, and in the sum of \$11,147.30 for the taxable year ended October 31, 1935, accrued as obligations from said Petitioner to its members, without further corporate action.

(f) That the Commissioner erred in failing and refusing to recognize the liability of Petitioner to its members for the amounts evidenced by the items disallowed by him, as hereinbefore mentioned, which liability was fixed by the Cooperative Marketing Act of the State of Idaho, the Articles of Incorporation, By-Laws and Marketing Agreement of Petitioner, and could not be changed or altered by any corporate act of its directors or officers.

(g) That the Commissioner erred in not finding, holding and determining that the funds

evidenced by the items disallowed by him, as hereinbefore mentioned, were savings of Petitioner's members, belonged to such members, were not the property of this Petitioner, and that a definite liability existed on the part of this Petitioner to its members for the payment and distribution of such funds, which could not be changed, altered or amended in any way by the Board of Directors or officers of the association.

5. The facts upon which the Petitioner relies, as the basis of this proceeding are as follows: [5]

(a) That Petitioner, during the periods involved in this proceeding, namely, January 1, 1934, to October 31, 1935, and at all times since its organization, was, and now, is, an association of producers of agricultural products incorporated, organized and existing under and by virtue of the Cooperative Marketing Act of the State of Idaho, being Chapter 20, Title 22 of the Idaho Code Annotated, as amended by 1935 Session Laws, Chapter 113, for the purpose of supplying its members with necessary agricultural supplies on a cooperative basis, without profit; that at all times since its organization Petitioner has operated on a strictly cooperative basis, without profit to the Petitioner or to its members as such, for the purpose of supplying its members supplies, as hereinbefore mentioned, and to promote, foster and encour-

age the intelligent and orderly procuring of agricultural supplies and to eliminate speculation and waste and to make the procuring of agricultural supplies as direct as can be efficiently done through cooperation; that in such operation your Petitioner carried out the policy announced in said Cooperative Marketing Act of the State of Idaho and complied with its terms and provisions, said Act specifically providing that every association organized thereunder shall be nonprofit, as every such association is not organized thereunder to make profits for itself as such, or for its members [6] as such, but only for its members as producers.

(b) That pursuant to and in accordance with the provisions of said Cooperative Marketing Act, and particularly that provision providing that your Petitioner was not organized for profit to itself or its members as such, this Petitioner at all times hereinbefore mentioned did, and now does, keep its books and records with an accurate statement of the exact amount of supplies purchased by each and every member, each member having a separate account, so that your Petitioner can at all times ascertain the exact amount of all sums, advanced by any member, to which such member is entitled; that the items disallowed by the Commissioner, as hereinbefore mentioned, evidenced sums advanced by members for the purchase of supplies

and not used by the association in the payment of such supplies or its operating expenses, and belonged to and were the property of Petitioner's members in a definite proportion, according to patronage as fixed by its Articles of Incorporation, By-laws, and Membership Agreement, and were not earnings or the property of your Petitioner; that the portion of the sums or funds evidenced by the items so disallowed by the Commissioner, to which each of Petitioner's members was entitled, and the amount of the liability of Petitioner to each member, of such funds, at all times were and now are ascertainable and shown by the books and records of your petitioner. [7]

(c) That the Cooperative Marketing Act of the State of Idaho, above mentioned, and the Articles of Incorporation, By-laws, and Membership Agreement of Petitioner, provide in substance and effect that sums advanced by Petitioner's members for the purchase of supplies and not used in the purchase thereof or in the operating expenses of Petitioner, are savings to and the property of Petitioner's members, as above mentioned, and become and are obligations and liabilities of Petitioner to such members, in proportions according to patronage, as above mentioned and as shown by the books and records of Petitioner, and that the amount of such sums is a definite liability of Petitioner

that the determination of your excess-profits tax liability for the years mentioned discloses a deficiency of \$1,005.75, as shown in the statement attached.

In accordance with Section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiencies mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies above stated.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:Cl:P-7. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By JOHN R. KIRK

Deputy Commissioner.

Enclosures:

Statement

Form 870 [10]

STATEMENT

IT:E:4

HAK-90D

Co-operative Oil Association, Inc.,
Formerly Co-operative Union Oil Company,
210 South Seventh Street,
Caldwell, Idaho

Tax Liability for Taxable Year January 1
to October 31, 1934 and Taxable Year
Ended October 31, 1935.

Income Tax Liability

Year	Liability	Assessed	Deficiency
January 1 to October 31, 1934	\$1,475.08	\$ 409.83	\$1,065.25
Year ended October 31, 1935	2,343.27	646.94	1,696.33
Totals	\$3,818.35	\$1,056.77	\$2,761.58

Excess-Profits Tax Liability

January 1 to October 31, 1934	\$ 505.57	\$ 118.21	\$ 387.36
Year ended October 31, 1935	722.62	104.23	618.39
Totals	\$1,228.19	\$ 222.44	\$1,005.75

In making this determination of your income and excess-profits tax liabilities, careful consideration has been given to the internal revenue agent's reports dated October 15, 1937, and to your protest dated November 29, 1937.

Adjustments to Net Income

Taxable Year January 1
1934 to October 31, 1934

Net income as disclosed by return.....\$ 2,511.67

Unallowable deductions and additional income:

[11]

(a) Profit on stock.....	\$ 2.65	
(b) Option written down.....	20.00	
(c) Reserve for interest, taxes, etc.	1,338.38	
(d) Depreciation	282.30	
(e) Patronage dividends	6,872.68	8,516.01
		<hr/>
		\$11,027.68

Nontaxable income and additional deductions:

(f) Book profit overstated.....	\$ 0.54	
(g) Income tax overstated.....	.10	
(h) Nontaxable interest	32.00	
(i) Cash "short"	267.18	299.82
		<hr/>

Net income corrected.....\$10,727.86

Explanation of Adjustments

Items (a), (b), (c), (d), (f), (g), (h) and (i), inclusive. These adjustments which were made in a previous examination of your books of account and records under date of July 30, 1936, were agreed to by you as evidenced by payment of the amount of the deficiency resulting therefrom to the collector of internal revenue for your district.

Item (e). Patronage dividends were declared by the board of directors and paid as follows:

Date Declared	Date Paid	Amount Declared and Paid
March 13, 1934	April 30, 1934.....	\$3,200.85
September 12, 1934	October 31, 1934.....	4,663.68
Total paid		\$7,864.53
Amount deducted in the return.....		14,737.21
Amount disallowed		\$6,872.68

[12]

Since liability for payment of patronage dividends pursuant to corporate action during the year January 1, 1934 to October 31, 1934, amounted to \$7,864.53, which amount is less than the amount available for payment of said dividends, this amount has been allowed as a deduction from gross income. See *Farmers Union State Exchange, 30 United States Board of Tax Appeals 1051* and *Fruit Growers' Supply Co. v. Commissioner, 56 F. (2d) 90, 10 Am. Fed. Tax Rep. 1277.*

Computation of Tax
Income Tax

Net income	\$10,727.86
Income tax liability at 13 $\frac{3}{4}$ %.....	1,475.08
Income tax assessed:	
Original, account #March 1935, 40013	\$345.35
Additional, October 1936 list, account #52001	64.48
	409.83
Deficiency of income tax.....	\$ 1,065.25

Excess-Profits Tax

Computation in accordance with Income Tax Ruling 2951, Internal Revenue Bulletin dated January 20, 1936, volume 15, No. 3, page 2.

1. Net income for ten-month period.....	\$ 10,727.86	
2. Item (1) multiplied by 12.....	128,734.32	
3. Net income on annual basis (\$128,734.32 ÷ 10).....	12,873.43	
4. Deduction of declared value (12½% of \$5,918.00).....	739.75	
		<hr/>
5. Net income subject to excess-profits tax.....	\$ 12,133.68	
6. Tax on item (5) at 5%—annual basis.....	\$ 606.68	
7. Excess-profits tax liability for period (\$606.68 x 5/6).....	\$ 505.57	
		[13]
8. Excess-profits tax previously assessed:		
Original, account # March 1935, 40013	\$88.60	
Additional, October 1936 list, account #52001	29.61	118.21
		<hr/>
Deficiency of excess-profits tax.....	\$	387.36

Adjustments to Net Income

Year Ended October 31, 1935

Net income as disclosed by return.....	\$ 4,705.06	
Unallowable deductions and additional income:		
(a) Adjustment preferred stock account	\$ 65.00	
(b) Taxes	224.89	
(c) Dividends paid	556.23	
(d) Depreciation	172.89	
(e) Donations	36.50	
(f) Organization expense	399.67	
(g) Patronage dividends	11,147.30	12,602.48
		<hr/>
		\$17,307.54

Nontaxable income and additional deductions:		
(h) Nontaxable interest	\$ 240.00	
(i) Cash "short"	25.58	265.58
	<hr/>	<hr/>
Net income corrected.....		\$17,041.96

Explanation of Adjustments

(a) In connection with the reconciliation of accounts receivable from subscribers to preferred stock with preferred stock subscribed but unissued an uncollectible account was charged to the reserve for bad debts. A corresponding credit of \$65.00 to preferred stock subscribed but unissued was transferred to surplus and reported as nontaxable income in the income tax return. The credit to preferred [14] stock subscribed but unissued should have been offset against the charge to accounts receivable and inasmuch as a deduction was claimed for an addition to the reserve for bad debts, a credit of \$65.00 constitutes taxable income.

(b) Property taxes were accrued in the estimated amount of \$1,365.00 as compared with an actual liability of \$1,180.11 which existed at October 31, 1935, making a difference of \$184.89. The deduction claimed in the income tax return was found overstated by the amount of \$40.00 and taxes deduction has been reduced from \$1,850.49 to \$1,625.60.

(c) A deduction of \$556.23, representing dividends paid on preferred stock, was erroneously claimed in the income tax return.

(d) An adjustment of overaccrual of depreciation amounting to \$172.89 was credited to surplus

account and was reported as non-taxable income in schedule L of the income tax return. This amount should have been offset against the deduction claimed for depreciation.

(e) Donations made in the amount of \$36.50 are not deductible from gross income. See article 23 (o)-2, Regulations 86, Revenue Act of 1934. A deduction in the amount of \$36.50 was erroneously claimed under item 25(b), page 1, of the income tax return.

(f) Organization expense written off in the amount of \$399.67 has been disallowed as a deduction from gross income in accordance with article 24-2, Regulations 86, Revenue Act of 1934. This item was included in the deduction claimed for legal expenses amounting to \$618.67 under item 25(b), page 1, of the income tax return.

(g) Patronage dividends were declared by the board of directors and paid as follows:

Date Declared	Date Paid	Amount Declared and Paid
February 13, 1935	April 18, 1935.....	\$ 6,569.38
October 9, 1935	October 31, 1935.....	11,357.15
Total paid		\$17,926.53
Amount deducted in the return.....		29,073.83
Amount disallowed		\$11,147.30

[15]

Since liability for payment of patronage dividends pursuant to corporate action during the taxable year ended October 31, 1935 amounted to \$17,-

926.53, which amount is less than the amount available for payment of said dividends, this amount has been allowed as a deduction from gross income. See *Farmers Union State Exchange*, 30 United States Board of Tax Appeals 1051 and *Fruit Growers' Supply Co. v. Commissioner*, 56 F. (2d) 90, 10 Am. Fed. Tax. Rep. 1277.

(h) Interest accrued on bonds of the Pioneer Irrigation District, a political subdivision of the State of Idaho, amounting to \$240.00, was included in interest income reported in the amount of \$260.42. The amount of \$240.00 has been excluded from gross income under the provisions of section 22(b) (4), Revenue Act of 1934.

(i) An additional deduction has been allowed for cash short, the computation of which is as follows:

Cash short for the fiscal year ended October 31, 1935, appearing in ending balance sheet submitted with the income tax return for that year	\$ 236.66
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Less:

Cash short for the period from January 1, 1933 to October 31, 1934, appearing in ending balance sheet submitted with the return for the period ended October 31, 1934, and charged to expense and included in deduction claimed for general expense in the return for the fiscal year ended October 31, 1935.....	211.08
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Additional deduction allowed.....	\$ 25.58
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Co-operative Oil Assn., Inc.

Computation of Tax

Income Tax

Net income	\$17,041.96
	[16]
Income tax liability at 13¾%.....	\$ 2,343.27
Income tax assessed, account #January	
1936—40002	646.94
	\$ 1,696.33
Deficiency of income tax.....	\$ 1,696.33

Excess-Profits Tax

Net income	\$17,041.96
Exemption, 12½% of \$20,716.96, adjusted de- clared value of capital stock.....	2,589.62
	\$14,452.34
Balance	722.62
Excess-profits tax liability at 5%.....	
Excess-profits tax assessed, account #January	
1936—40002	104.23
	\$ 618.39
Deficiency of excess-profits tax.....	\$ 618.39

[Endorsed]: Filed July 2, 1938. [17]

[Title of Board and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits, denies and alleges as follows:

1. Admits that the petitioner, Co-Operative Oil Association, Inc., was organized under the laws of

the State of Idaho, with its principal office and place of business at Caldwell, in the County of Canyon, State of Idaho, and that the returns for the periods involved herein were filed with the Collector of Internal Revenue at Boise, Idaho, as follows: Return for the period December 31, [18] 1933, to October 31, 1934, filed on the 14th day of March, 1935; for the period October 31, 1934, to October 31, 1935, filed on the 14th day of January, 1936, as alleged in paragraph 1 of the petition. Denies all other allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Denies that the deficiency excess profits tax liability for the period January 1, 1934, to October 31, 1934, is \$487.36, as alleged in paragraph 3 of the petition. Alleges that the deficiency in excess profits tax liability for the period January 1, 1934, to October 31, 1934, is \$387.36. Admits all other allegations contained in paragraph 3 of the petition.

4. (a), (b), (c), (d), (e), (f), and (g). Denies that the Commissioner erred as alleged in subparagraphs (a) to (g), inclusive, of paragraph 4 of the petition.

5. (a) For lack of information denies all material allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) For lack of information denies all material allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition. [19]

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the petitioner's appeal be denied.

Signed J. P. WENCHEL

T M M

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

ARTHUR L. MURRAY,

Special Attorneys,

Bureau of Internal Revenue.

ALM:E 8/2/38.

[Endorsed]: Filed Aug. 9, 1938. [20]

[Title of Board and Cause.]

The petitioner, a cooperative marketing association organized under the Cooperative Marketing Act of Idaho, is not entitled to deductions for such "patronage dividends" as were not declared and paid during the taxable years. *Farmers Union State Exchange*, 30 B. T. A. 1051, followed.

Walter Griffiths, Esq. and J. L. Eberle, Esq.,
for the petitioner.

H. R. Horrow, Esq.,
for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION.

This proceeding was brought to redetermine deficiencies in the income taxes of the petitioner for the taxable year from January 1, 1934, to October 31, 1934, and for the fiscal year ending October 31, 1935, in the sums of \$1,065.25 and \$1,696.33, respectively, and also deficiencies in the petitioner's excess profits taxes for the same years in the sums of \$387.36 and \$618.39, respectively.

The sole issue is the deductibility of patronage dividends amounting to \$6,872.68 for the period from January 1 to October 31, 1934, and to \$11,147.30 for the year ending October 31, 1935.

FINDINGS OF FACT

The petitioner is a corporation organized in 1933 as a non-profit cooperative marketing association under the Cooperative Marketing Act of the State of Idaho, and has its principal office in Caldwell, Idaho. Its original name was Cooperative Union Oil Company of Boise Valley, State of Idaho, but on June 8, 1935, its name was changed to Cooperative Oil Association, Inc. Its charter granted to it broad general powers to purchase, sell and deal in prop-

erties of every kind but particularly petroleum products and automobile accessories and supplies.

The petitioner's authorized capital stock consisted of 5,000 shares of common stock of the par value of \$1.00 each and 3,000 shares of redeemable non-voting, non-participating 6 per cent preferred stock of the par value of \$5.00 each. Dividends on preferred stock are payable before other stockholders may share in the earnings and are cumulative. No stockholding patron may own more than one share of common stock nor cast more than one vote. The articles of incorporation contain the following provision:

The net income of this corporation, except such amounts as by law are required to be set aside for reserve funds, or which may be set aside as reserve funds, by the Board of Directors or by vote of stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the Board of Directors. [21]

The interest of each stockholding patron in the savings or earnings of the petitioner is determined by the amount of purchases made by him. The management of the petitioner's affairs is vested in a board of six directors. Membership in the petitioner is limited to those engaged in the production of agriculture products and is conditioned upon the

purchase of one share of common stock and the execution of a membership agreement. By that agreement members agree to purchase all gasoline and petroleum requirements from the petitioner. If the member fails so to purchase for 60 days the petitioner's board of directors may cancel his common stock and one share of his preferred stock and retain his share in the accumulated patronage dividends as liquidating damages. The agreement also provides as follows:

* * * before distribution of patronage dividends, it is the duty of the board of directors, and they shall retain and accumulate out of the net earnings of the corporation, such amounts as in their judgment are necessary and proper to create a reserve or reserve funds necessary to provide working capital, depreciation and other reserves and the proper facilities for carrying on the business of the corporation.

Section 2, Article VIII, of the by-laws provides:

* * * Whenever all cumulative dividends on preferred stock for all previous years shall have become payable, and the accrued dividends for the current year shall have been declared and the corporation shall have paid such cumulative dividends for previous years, and such accrued dividends for the current year, or shall have set aside from its surplus or net profits a sum sufficient for payment thereof, the board of directors may declare other divi-

dends or distribute earnings to the stockholding patrons of the corporation as hereinafter provided.

Section 1, Article IX of the by-laws is as follows:

Reserve Funds and Investments.

Section 1. Before distribution of patronage dividends herein provided for it shall be the duty of the board of directors, and they shall have the right to retain and accumulate out of the net earnings of the corporation such amounts as, in the judgment of said board of directors are necessary and proper to create a reserve or reserve funds necessary to provide working capital and the proper facilities for carrying on the business of the corporation.

Article X of the by-laws is as follows:

Net Earnings.

Section 1. The net income of this corporation except such amounts as by law are required to be set aside as reserve funds, or which may be set aside as reserve funds, or which may be set aside as reserve funds by the board of directors, or by the vote of the stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the board of directors. Such patronage dividends shall be ascertained and distributed by order of the board of directors at least once during

each fiscal year of the corporation, and may be so ascertained and paid by order of said board twice each fiscal year, at the discretion of the board. [22]

When any purchase was made by a member the sales ticket covering the purchase was made out in triplicate, one copy going to the member and the other two being retained by the petitioner. Of the latter copies, one was used for accounting purposes and the other was filed in a folder which was marked with the member's name and in which all sales tickets credited to him were kept. No accounts were set up on the general ledger of petitioner relating to purchases made by members but the aggregate of such transactions was entered on its books. Two reserve accounts were kept by the petitioner, entitled "Reserve for Working Capital" and "Reserve for Contingency, Obsolescence and Extension".

On May 1, 1934, the petitioner sent to its members a circular letter containing the following statement:

To All Members:

The attached draft or credit is only a part of your savings for the six months period ending January 31st, 1934. Your board of directors considers it desirable to retain a portion of the net profits of this period for working capital. As rapidly as our reserves accumulate these earnings will be released and disbursed to you as Patronage Refunds. In the meantime the

money is being devoted to the excellent purpose of building your company and making possible larger dividends for the future.

No money was paid to members other than pursuant to resolutions of the board of directors. The portion of the current savings not released to members by authority of such resolutions was retained by the petitioner, entered on its books as "Reserve for Working Capital" and carried on its balance sheet as a liability to its members.

During the period from January 1, to November 1, 1934, the directors of the petitioner declared dividends which were paid during that year aggregating \$7,864.55. The total amount of savings for the year was \$14,737.21 which the petitioner took as a deduction on its income tax return for that period. During the fiscal year ending October 31, 1935, the directors declared and paid dividends aggregating \$17,926.53. The total amount of savings for that year was \$29,073.83 which the petitioner also took as a deduction on its return for such year.

OPINION

Van Fossan: The petitioner has made no claim that it is an exempt corporation¹. It contends only that the full amount of savings earned is deductible. Respondent allowed the amounts actually declared as dividends during the taxable years.

¹Section 101 (12), Revenue Act of 1934.

In support of this position petitioner argues that a liability to pay the entire yearly savings was created by the articles of incorporation, the by-laws, the membership agreement and that it was also recognized by the communications sent by the petitioner to its members. Petitioner overlooks, however, the provisions in the articles of incorporation that the "net income *except* such amounts as by law are required * * * or which *may be set aside as reserve funds* by the Board of Directors * * * shall be distributed * * *" (italics are by the Board). This exception is repeated in Section 1, Article X of the by-laws and is amplified in [23] Section 1, Article IX thereof. The membership agreement contains a similar repetition of the same required procedure. In keeping with this provision the Board of Directors excluded a certain portion of the petitioner's earnings and placed it in the account entitled "Reserve for Working Capital."

The petitioner further argues that each member's interest in the reserve fund is ear-marked by the ticket system of entries and concludes that he thereupon acquired ownership of his proportionate part of the savings so segregated and used. We are unable to agree. In *Farmers Union State Exchange*, 30 B. T. A. 1051, we said:

* * * We are of the opinion, however, that the charter provision alone cannot be construed as creating in each year a definite liability to pay the entire savings of that year, or any particu-

lar part thereof, to the patrons. In order to make the liability sufficiently definite to permit a deduction of any amount there should have been some declaration or act on the part of the directors with respect to payment of patronage dividends. In the absence of evidence that any such declaration or act was made or done, we hold that the Exchange is not entitled to any deduction from income for 1917 and 1918 on account of patronage dividends which were not declared or paid.

We make the same holding here. In the absence of some definite act of appropriation, petitioner is not entitled to deduct the accumulated earnings as dividends.

Decision will be entered for the respondent.

Enter:

Entered July 7, 1939. [24]

United States Board of Tax Appeals
Washington

Docket No. 94580.

CO-OPERATIVE OIL ASSOCIATION, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its Memorandum Findings of Fact and Opinion entered July 7, 1939, it is

Ordered and Decided: That there are deficiencies in income tax for the year from January 1, 1934 to October 31, 1934 and for the fiscal year ending October 31, 1935 in the amounts of \$1,065.25 and \$1,696.33, respectively; and deficiencies in excess profits tax for the same years in the amounts of \$387.36 and \$618.39, respectively.

Enter:

Entered Jul 10 1939.

[Seal] (Signed) ERNEST H. VAN FOSSAN
Member. [25]

[Title of Board and Cause.]

PETITION FOR REVIEW BY UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT OF DECISION BY UNITED STATES BOARD OF TAX APPEALS.

Co-Operative Oil Association, Inc., Petitioner in this cause, by Walter Griffiths and J. L. Eberle, counsel, hereby files its petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by the United States Board of Tax Appeals, rendered on July 10, 1939, in the above entitled matter, determining deficiencies in Petitioner's federal income taxes for the year from January 1, 1934, to October 1, 1934, and for the fiscal year ending October 31, 1935, in the amounts of \$1,065.25 and \$1,696.33, respectively, and deficiency in the excess profits taxes for the same years in the amounts of \$387.36 and \$618.39, respectively; and respectfully shows: [26]

I.

That Petitioner, Co-operative Oil Association, Inc., is a corporation duly organized and existing under and by virtue of the Co-operative Marketing Act of the State of Idaho, under Chapter 20, Title 22, Idaho Code Annotated, with its principal office in Caldwell, Canyon County, State of Idaho; that Petitioner declares the court in which such review is sought to be the United States Circuit Court

of Appeals for the Ninth Circuit, and seeks review of said decision by such court, inasmuch as, and Petitioner alleges, the Collector's office, to wit: Boise, Idaho, to which were made the returns of the taxes in respect of which the liability involved herein arises, is located in said Ninth Circuit.

II.

Nature of Controversy

The controversy involves the proper determination of petitioner's liability for federal income taxes for the year from January 1, 1934, to October 1, 1934, and for the fiscal year ending October 1, 1935, and excess profits taxes for the same years.

Petitioner is a cooperative association organized under the Co-operative Marketing Act of the State of Idaho, which provides that no association organized thereunder is [27] organized for profit either for itself or for its members as such but only for its members as producers; that during the years above mentioned petitioner secured supplies for its members, producers of agricultural products, and received the difference between the general market price of such supplies and their cost through mass purchasing, which difference or savings belonged to such members, although no distribution was made of such savings involved in this matter during said years. Such undistributed savings, belonging to Petitioner's members, became and were obligations and liabilities of Petitioner for such members. Accordingly they were deducted by Petitioner from its

gross income in the amounts of \$6,872.68 and \$11,147.30, in the periods above mentioned, respectively.

The Commissioner of Internal Revenue held that, inasmuch as these savings had not been distributed by express direction or resolution of the Board of Directors during the periods of time above mentioned, tax thereon must be paid and disallowed the deductions claimed by Petitioner and determined the deficiencies as aforesaid. The United States Board of Tax Appeals affirmed the Commissioner's ruling, and review of such decision is hereby sought.

III.

The said Co-operative Oil Association, Inc., Petitioner herein, being aggrieved by the findings, conclusions and opinion of the United States Board of Tax Appeals, and by [28] its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

ASSIGNMENTS OF ERROR

That Petitioner assigns as error the following acts and omissions of the Board of Tax Appeals:

1. The failure to allow as a deduction from Petitioner's gross income for the taxable year January 1, 1934, to October 31, 1934, members' savings in the sum of \$6,872.68;

2. The failure to allow as a deduction from Petitioner's gross income for the taxable year October

31, 1934, to October 31, 1935, members' savings in the sum of \$11,147.30;

3. The failure to find and hold that there was nothing in Petitioner's Articles of Incorporation, By-laws, Marketing Agreement, and in the Co-operative Marketing Act of the State of Idaho, which would permit said members' savings, thus disallowed, to accrue as such, without corporate action setting them apart as a liability of Petitioner to its members;

4. The holding that the deduction for such members' savings by the Petitioner should be limited to amounts which were separately declared or paid during the taxable year; [29]

5. The failure to hold, find and determine that under, pursuant to and by virtue of the Co-operative Marketing Act of the State of Idaho and the Articles of Incorporation and By-laws of Petitioner, and its Membership Agreement between it and its members, the items disallowed, as hereinbefore mentioned, for members' savings in the sum of \$6,872.68, for the taxable year ending October 1, 1934, and in the sum of \$11,147.30, for the taxable year ending October 31, 1935, accrued as obligations from petitioner to its members without further corporate action;

6. The failure to hold and recognize the liability of Petitioner to its members for the amounts evidenced by the items disallowed, as hereinbefore mentioned, which liability was fixed by the Co-

operative Marketing Act of the State of Idaho, Articles of Incorporation, By-laws, and Marketing Agreement of Petitioner;

7. The failure to find and hold that the funds evidenced by the items disallowed, as hereinbefore mentioned, were savings of Petitioner's members, belonging to such members, and were not the property of this Petitioner.

8. In holding that there was required corporate action by the Board of Directors of the Petitioner to distribute such savings and to make the same a liability of Petitioner. [30]

9. In finding and holding that there are deficiencies in income taxes for the year from January 1, 1934, to October 31, 1934, and for the fiscal year ending October 31, 1935, in the amounts of \$1,065.25 and \$1,696.33, respectively; and in finding and holding that there are deficiencies in excess profits taxes for the same years, in the amounts of \$387.36 and \$638.39, respectively.

WALTER GRIFFITHS

Residence: Caldwell, Idaho,

J. L. EBERLE

Residence: Boise, Idaho,
Counsel for Petitioner.

United States of America
State of Idaho
County of Ada—ss.

J. L. Eberle, Being first duly sworn, on oath deposes and says:

That he is counsel of record in the above cause; that as such counsel he is authorized to verify the foregoing Petition for Review; that he has read the said petition and is familiar with the statements contained therein, and that the statements made are true to the best of his knowledge, information and belief.

J. L. EBERLE

Subscribed and sworn to before me this 3rd day of October, 1939.

[Seal]

CHAS. H. DARLING

Notary Public for Idaho,

Residence: Boise, Idaho.

[Endorsed]: Filed Oct. 5, 1939. [31]

[Title of Board and Cause.]

STATEMENT OF EVIDENCE

Following Is a Statement Of evidence submitted to the Board of Tax Appeals in the above mentioned case, so far as is necessary to the assignments of error as filed, reduced to narrative form:

GEORGE A. BARRETT,

a witness on behalf of Petitioner, testified as follows:

(Direct Examination)

“I am associated with Petitioner, Co-operative Oil Association, in the capacity of General Man-

(Testimony of George A. Barrett.)

ager, and as such have general charge of its business. I am familiar with all of its operations, and the mechanics of the handling of its business, and its books and records are kept and maintained under my supervision.

“Petitioner’s Exhibit No. 1 is a certified copy of the Articles of Incorporation of Petitioner in effect during the periods involved in this matter. [32]

“There have been two amendments to the Articles of Incorporation. The first was made in 1933. The amount of capital stock was changed on the 11th day of June, 1935. These changes appear in Petitioner’s Exhibit No. 1.

“Prior to June 8, 1935, the name of the Petitioner was ‘The Cooperative Union Oil Company of Boise.’

PETITIONER’S EXHIBIT No. 1.

AMENDED ARTICLES OF INCORPORATION OF

COOPERATIVE UNION OIL COMPANY OF BOISE VALLEY, STATE OF IDAHO

* * * *

Know All Men by These Presents:

That we, the undersigned constituting all the directors of Cooperative Union Oil Company of Boise Valley, State of Idaho, a corporation, organized under the laws of the State of Idaho, and all residents and citizens of the State of Idaho, engaged in

(Testimony of George A. Barrett.)

the production of agricultural products, do hereby voluntarily, and pursuant to authorization of a majority vote of the stockholders and members of said corporation, at a regular meeting thereof duly called and held in the City of Caldwell, Idaho, on the 5th day of August, 1933, at which meeting said stockholders and members by a majority vote decided to accept the benefits of and be bound by the provisions of Chapter 20 I. C. A. 1932, associate ourselves together with such other person or persons as may hereafter become associated with us, into and for the purpose of forming and incorporating a non-profit cooperative marketing association under the provisions of the Cooperative Marketing Act of the State of Idaho, and for the purpose of enabling said corporation, the stockholders and members thereof to become and operate as such non-profit cooperative marketing association, and for those purposes and to those ends, we hereby make, subscribe and execute the following Articles of Incorporation [55] of said association, and we hereby certify in writing, as follows:

* * * * *

Article II.

That the purposes and objects for which said corporation is formed are:

(a) To acquire, receive, own, hold, manage, operate, sell, convey, lease, mortgage, encumber, pledge, assign and transfer for its members and

(Testimony of George A. Barrett.)

stockholders, all properties of every kind and nature, both real, personal and mixed, including minerals, petroleum, petroleum products, oil, vehicles of every kind and nature, including motor vehicles, and automobile and motor accessories, parts and supplies, and all forms of rights and obligations of other corporations, forms and individuals, and to acquire, establish, engage and deal in, manage, carry on and conduct, sell and dispose of any business or enterprise for any or all of said purposes in any form whatsoever, and to engage in, manage, carry on and conduct, any business or enterprise which the board of directors may determine to be for the best interests of the corporation, its members and stockholders, and authorized and not forbidden by the Cooperative Marketing Act of the State of Idaho, and with [56] all the powers conferred upon Cooperative Marketing Associations by the laws of the State of Idaho; to engage in any activity in connection with the purchasing, hiring, manufacturing, mortgaging, storing, handling, selling or use, to, by, or for its members and stockholders of merchandise, supplies, machinery and equipment including the merchandise, supplies, machinery and equipment in these Articles of Incorporation specifically mentioned; or in the financing of any such activities, or in any one or more of the activities specified in these Articles of Incorporation; to do business with non-members in an amount not to exceed that done with members. [57]

(Testimony of George A. Barrett.)

(j) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the Association; and to contract accordingly, and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the Association is organized, or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of the Cooperative Marketing Act of the State of Idaho, and to do any such thing anywhere, both within and without the State of Idaho. [59]

(1) The foregoing clauses shall be construed both as objects and powers, but no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed to be exclusive and shall not be held to limit or restrict in any manner the powers granted by the laws of the State of Idaho to Cooperative Marketing Associations; but it is hereby expressly declared that all lawful powers not inconsistent therewith are hereby included. [60]

Article V.

That the capital stock of this corporation authorized to be issued shall be five thousand (5000) shares

(Testimony of George A. Barrett.)

of common stock of the par value of One Dollar (\$1.00) per share and of the aggregate par value of Five thousand dollars (\$5000.00), which said common stock shall be non-interest bearing, and three thousand (3000) shares of non-voting, non-participating, preferred shares of the par value of Five Dollars (\$5.00) each, and of the aggregate par value of Fifteen Thousand Dollars (\$15,000.00). Shares of preferred stock shall entitle the owners thereof to receive when and as declared from the surplus and net profits of the corporation, yearly dividends at the rate of not to exceed six per cent (6%) per annum from the date of issue. The dividends on such preferred stock shall be cumulative, and shall be payable before any other dividends shall be paid or set apart; so that, if in any year dividends shall not have been paid thereon, the deficiency shall be payable, before any other dividend or distribution of earnings shall be paid to members. Whenever all cumulative dividends on preferred stock for all previous years shall have become payable, and the accrued dividends for the current year shall have been declared, and the corporation shall have paid such cumulative dividends for previous years and such accrued dividends for the current year, or shall have set aside from its surplus or net profits, a sum sufficient for payment thereof, the Board of Directors may declare other dividends or distribute earnings to the stockholding patrons of the corpora-

(Testimony of George A. Barrett.)

tion as hereinafter provided. [61] On a dissolution of the corporation, voluntarily or otherwise, the holders of preferred stock shall be entitled to have their shares redeemed at par, together with accrued dividends thereon, to the date of dissolution, before any distribution of any part of the assets of the corporation shall be made to the members of this association on account of their common stock. The shares of preferred stock shall confer no right to vote upon the owners thereof, at any meeting of the stockholders, or to participate in the management of the affairs of the corporation. Said preferred stock shall be subject to redemption at the option of this corporation at not less than par and accrued interest at any time, following the date of issue.

The net income of this corporation, except such amounts as by law are required to be set aside for reserve funds, or which may be set aside as reserve funds, by the Board of Directors or by vote of stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the Board of Directors.

Shares of common stock shall entitle the owners thereof to vote on all questions at stockholder's meetings. Not more than one share of common stock may be held by any one person.

(Testimony of George A. Barrett.)

Both common and preferred stock shall be paid for at such times and in such manner as the by-laws of this corporation shall direct, and no stock shall be issued for less than its par value or until the same has been paid for in cash [62] or its equivalent and such payments have been deposited with the treasurer of this association.

Each common stockholder shall be restricted to only one vote in the affairs of this corporation; provided, however, that voting by proxy shall not be permitted, but in case the Board of Directors shall so authorize, the common stockholders may vote by mail in accordance with such rules and regulations as shall be adopted by the Board of Directors.

Shares of stock may be transferred in the manner provided by law, provided, however, that no shares of common stock may be sold or transferred on the books of the corporation without the approval of the Board of Directors or to anyone not qualified to become a member or who has not signed the corporation's purchasing agreement; provided, further however, the corporation reserves the right to purchase its common stock as provided by the Cooperative Marketing Act of the State of Idaho. [63]

* * * * *

Article IX.

The private property of a member shall not be subject to the payment of corporate debts; and, ex-

(Testimony of George A. Barrett.)

cept for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his stock, including any unpaid balance on promissory notes given in payment therefor.

[Endorsed]: Petitioner's Exhibit No. 1. Admitted in evidence Nov. 1, 1938. [65]

“Exhibit No. 2 is Petitioner's income tax return for the period December 31, 1933, to October 31, 1934, and Exhibit No. 3 is Petitioner's return for the period November 1, 1934, to October 31, 1935.

PETITIONER'S EXHIBIT No. 2

INCOME TAX RETURN FOR YEAR 1934

* * * * *

The reserves for working capital of \$10,040.51 is composed of \$1,042.81 savings on non-member business and \$8,997.70 savings on member business and will be distributed at some future date.

* * * * *

[Endorsed]: Admitted in evidence Nov. 7, 1938.

[78]

“Petitioner's Exhibit No. 4 is a certified copy of Petitioner's By-laws during the periods involved in this matter.

(Testimony of George A. Barrett.)

PETITIONER'S EXHIBIT No. 4

AMENDED BY-LAWS

of the

COOPERATIVE UNION OIL COMPANY OF
BOISE VALLEY, STATE OF IDAHO. [89]

* * * * *

Article III.

Membership.

Section 1. Any person engaged in the production of agricultural products, upon the purchase of one share of the common stock of this corporation and by signing the corporation's purchasing agreement and by subscribing to such rules and regulations as may be required by the corporation shall become of record a member of this corporation. All members in becoming such agree to purchase all their gasoline and other petroleum requirements from this corporation. [91]

* * * * *

Article VIII.

Stock Certificates. [97]

* * * * *

Section 4. Shares of common stock shall entitle the owners thereof to vote on all questions at stockholders' meetings. Not more than one share of common stock may be held by any one person.

* * * * *

Section 6. Each common stockholder shall be restricted to only one vote in the affairs of this cor-

(Testimony of George A. Barrett.)

poration; provided however, that voting by proxy shall not be permitted, but in case the board of directors shall so authorize it, the members may vote by mail in accordance with such rules and regulations as shall be adopted by the board of directors.

[98]

* * * * *

Section 8. No purchaser at an execution sale or any other person who may succeed by operation of law or otherwise to the property interest of a member shall be entitled to membership or to become a member of the association by virtue of the transfer of stock in such manner. The board of directors of the association may, however, consent to any assignment and transfer and the acceptances of the assignee or transferee as a member of the association.

[99]

* * * * *

Section 11. The net income of this association, except such amounts as by law are required to be set aside for reserve funds or which may be set aside as reserve funds by the board of directors or by a vote of stockholders shall be distributed to the stockholding patrons of this association who have signed the associations purchasing agreement on the basis of their patronage and as shall be provided by the board of directors.

* * * * *

(Testimony of George A. Barrett.)

Article IX.

Reserve Funds and Investments.

Section 1. Before distribution of patronage dividends herein provided for it shall be the duty of the board of directors, and they shall have the right to retain and accumulate out of the net earnings of the corporation such amounts as, in the judgment of said board of directors are necessary and proper to create a reserve or reserve funds necessary to provide working capital and the proper facilities for carrying on the business of the [100] corporation.

* * * * *

Article X.

Net Earnings.

Section 1. The net income of this corporation except such amounts as by law are required to be set aside as reserve funds, or which may be set aside as reserve funds, or which may be set aside as reserve funds by the board of directors, or by the vote of the stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the board of directors. Such patronage dividends shall be ascertained and distributed by order of the board of directors at least once during each fiscal year of the corporation, and may be so

(Testimony of George A. Barrett.)

ascertained and paid by order of said board twice each fiscal year, at the discretion of the board.

Article XI.

Marketing Contracts.

The company, through its board of directors, may make and execute marketing, purchasing and selling contracts not inconsistent with the provisions of law.

[Endorsed]: Petitioner's Exhibit No. 4. Admitted in evidence Nov. 1, 1938. [101]

“The principal products delivered by Petitioner are gasoline, oil, tires, grease and various accessories. Petitioner has members and issues common stock, which, as a matter of fact, is a Membership Certificate. In accordance with the By-laws all members enter into marketing agreements with Petitioner. Petitioner's Exhibit No. 5 is the form of such marketing agreement used during the periods involved in this matter.

PETITIONER'S EXHIBIT NO. 5

Certificate

I, C. A. Oliason, Secretary of the Cooperative Oil Association, Inc. (formerly the Cooperative Union Oil Company of Boise Valley) do hereby certify that the annexed is a full, true and complete copy

(Testimony of George A. Barrett.)
of the Membership Contract used during 1934 and
1935 by the above named corporation.

Signed:

[Seal]

C. A. OLIASON

Secretary [104]

PURCHASING AGREEMENT AND APPLICATION
FOR MEMBERSHIP AND SUBSCRIPTION
FOR STOCK IN COOPERATIVE UNION OIL COMPANY OF BOISE
VALLEY, STATE OF IDAHO.

(Common Stock \$1.00 Per Share, Preferred Stock
\$5.00 Per Share)

I, (we) hereby apply for membership in the Co-operative Union Oil Company of Boise Valley, State of Idaho, an Idaho Corporation, and agree to purchase at par, and to pay for, upon the acceptance of this application by the said corporation, for one share of said corporation's common stock of the par value of \$1.00 and.....shares of its preferred stock of the par value of \$5.00 per share.

This agreement is executed by me (us) with full knowledge of the contents of the articles of incorporation and by-laws of said corporation, which I, (we) hereby ratify, confirm and approve and accept as binding upon me (us) in all their terms, and as further consideration for the acceptance of this application and allotment of shares herein subscribed for, or any part thereof, I (we) agree to purchase

(Testimony of George A. Barrett.)

all my (our) requirements of gasoline, oil and other petroleum products from said corporation from the time such products are available for distribution to me (us) by said corporation, and so long as I (we) use petroleum products in the territory served by said corporation and provided said products are available for convenient distribution to me (us); and in the event I, (we) fail or refuse to so purchase said products as herein agreed, for a continuous period of 60 days, I, (we) understand and agree that the board of directors of said corporation have full authority to cancel the common stock and one share of preferred stock so issued to me (us) hereunder, together with dividends accrued or accruing thereon, and that in addition thereto said corporation shall retain all unpaid patronage dividends, all as liquidated damages for my (our) failure to comply with my (our) agreement herein contained to so purchase said requirements.

I, (we) understand and agree that said corporation has an authorized capital stock of 5000 common shares of the par value of \$1.00 each and 3000 preferred shares of the par value of \$5.00 each; that the common stock is non-interest bearing and entitles the owner to one vote on all questions at stockholders' meetings; that not more than one share of common stock may be held by any one person; that voting by proxy is prohibited; that in the case of liquidation, all the net assets after payment

(Testimony of George A. Barrett.)

of dividends on preferred stock and payment of patronage dividends, are to be divided among the common stock; that common stock is not transferable without the approval of the board of directors of said corporation or until the corporation has been given the first right to purchase same; that preferred stock draws dividends at the rate of 6% per annum from date of issue, payable out of the net profits before any other dividends may be declared and does not participate in any of the other profits of the corporation and is non-voting, non-participating and non-cumulative and is subject to redemption at the option of the corporation at not less than par at any time following the date of issue; that before distribution of patronage dividends, it is the duty of the board of directors, and they shall retain and accumulate out of the net earnings of the corporation, such amounts as in their judgment are necessary and proper to create a reserve or reserve funds necessary to provide working capital, depreciation and other reserves and the proper facilities for carrying on the business of the corporation.

I, (we) understand and agree that shares of stock when issued shall be fully paid and non-assessable and that this application and agreement shall become binding and be effective immediately upon its acceptance by the corporation.

(Testimony of George A. Barrett.)

Dated this.....day of....., 193.....

Address.....

Accepted and approved this.....day of....., 193.....

COOPERATIVE UNION OIL
COMPANY OF BOISE VAL-
LEY, STATE OF IDAHO.

By.....

[Endorsed]: Petitioner's Exhibit No. 5. Ad-
mitted in evidence Nov. 7, 1938. [105]

“In the handling of supplies in the nature of pe-
troleum products the mechanics used by Petitioner
in keeping a record of the relationship of members
with Petitioner, were as follows: [33]

“A sales ticket is made out in triplicate, the
member receiving a copy and the other two copies
going to Petitioner's office; one of these tickets is
filed in the member's folder, under the member's
name, each member having such a folder; and the
other copy of the ticket is used for general account-
ing purposes in the office. Each individual member
has a separate folder. The Board of Directors
meets monthly and a financial report is submitted,
on which report there is shown the savings of the

(Testimony of George A. Barrett.)

members for the particular month. These accumulate through the year, month by month, and at the end of the year these savings are set up as a liability to the members by Petitioner. The savings, then, are shown each month in this statement, and, taken in connection with the folders showing the patronage of individual members, the savings of members are carried as 'Group One Account.' These savings of Petitioner's members are kept in one account in connection with the folders of individual members. From time to time Petitioner would release portions of these savings. The savings for the year were divided by the gross business in dollars of the member and that would determine percentage. It is an easy matter then to take the quota of each member's trade and figure it out on the basis of these percentages. [34]

"The Association from time to time would send circulars to members. These would sometimes be sent out with the sums which would be released out of these savings. Petitioner's Exhibit No. 7 is one of these circulars thus sent out to members by Petitioner. Petitioner's Exhibit No. 8 is likewise one of such circulars sent out by Petitioner to its members.

(Testimony of George A. Barrett.)

PETITIONER'S EXHIBIT No. 7

Cooperative Union Oil Company of Boise Valley
Caldwell, Idaho
May 1, 1934

To All Members:

The attached draft or credit is only a part of your savings for the six months period ending January 31st, 1934. Your board of directors considers it desirable to retain a portion of the net profits of this period for working capital. As rapidly as our reserves accumulate these earnings will be released and disbursed to you as Patronage Refunds. In the meantime the money is being devoted to the excellent purpose of building your company and making possible larger dividends for the future.

If you have not heretofore received your Stock Certificates, they will be contained herein. Will you kindly sign the self-addressed and stamped receipt card and mail? This is Important, as we must know that you have received your stock.

In case you gave a note for your preferred stock your dividend will be credited on the note. The attached statement will show amount still due if any. You will assist your company to render greater service if you can see your way clear to pay any balance still due on your note and your stock can then be issued to you and will earn you interest.

Your Co-operative Oil Company has just completed its first year of active service. This year has

(Testimony of George A. Barrett.)

been one of wonderful growth and is an outstanding example of the value to producers of cooperative purchasing organizations. Through this organization, you are building your own oil company, setting aside working capital and acquiring valuable assets in addition to your Patronage Refunds.

It is possible for the Cooperative Union Oil Company to become one of the largest institutions in Boise Valley—returning hundreds of thousands of dollars to its members in Patronage Dividends and to prove an outstanding example of Farmer Accomplishment through organization. On the other hand, it may prove a failure. We, as members, will write the verdict. By neglect and indifference; by allowing ourselves to be influenced by plausible misstatements of those who would profit by our defeat; by refusal to stand by our company in time of need, we will accomplish our own destruction. Just as truly we may, through our interest and enthusiasm, by our loyalty and determination, bring about a most glorious future.

Your board of directors and management extend to ~~a~~ members a most grateful appreciation for the fine spirit of loyalty and cooperation thus far received.

COOPERATIVE UNION OIL COMPANY

Manager GEO. BARRETT

[Endorsed]: Petitioner's Exhibit No. 7. Admitted in evidence Nov. 7, 1938. [118]

(Testimony of George A. Barrett.)

PETITIONER'S EXHIBIT No. 8

“Over-production is a money cry, not a human cry. Never yet has enough of any good thing been produced.”—Henry Ford.

[Trademark]

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Co-operative Thoughts

Beginnings

By Hugh J. Hughes

Consumer Co-operation

By Geo. G. Barrett

Statement of Operations.

Co-operative

Union Oil Company

of Boise Valley

Office

Caldwell, Idaho [119]

Co-operative Thoughts

“On the cold, windswept shore of Lake Michigan stands a bleak monument to the short sightedness of man. The ‘Century of Progress’ is no more. The profit system rallied its forces for one last great show. The engineers of the world brought the products of a century of toil to the market place—and the people came and saw and retreated again into poverty. For those who had taught the world how

(Testimony of George A. Barrett.)

to produce had failed to teach it how to consume.”
—Magazine, Co-operation.

“We now witness the spectacle of our master political and business minds—we may call them our master midwives—sitting by the bedside of capitalism in travail, waiting for a future that refuses to be born. While in our Co-operative household we behold our lusty infant advancing toward adolescence.”—Dr. J. P. Warbasse, President National Co-operative League.

“Co-operation proposes to recover private ownership of property for the people. It is Capitalism which has caused us to lose individual ownership. Co-operation will recover it. Co-operation stands against private-profit, but supports private property.”—E. R. Brown, Secretary National Co-operative League.

“The economic savings of (Consumer) Co-operation in the United States represents only a little stream, shunted off from the great current of profit. But this stream is growing larger. The surplus saving effected by our consumer societies last year amounted to about \$30,000,000.00. That we may think of as a beginning and an encouragement.”—Dr. J. P. Warbasse.

“The purposes of the Co-operative League should be made clear to all. It is organized to help bring into universal existence the fourth great economic system in the world’s history—the first of which was Slavery, the second, Serfdom, the third, Capi-

(Testimony of George A. Barrett.)

talism, the fourth, the Coming System of Co-operation.”—E. R. Bowen.

“Until you farmers realize and grasp the power which you possess to control the price of the commodities you have to buy on a parity with the price of things you have to sell, you will never have prosperity.”—Glen H. Anderson, Washington Egg Association.

If Capitalism had been satisfied with a reasonable share of the wealth, there would have been no Consumer revolt. Demanding as it does all of the producer’s goods through the avenues of profits, interest and taxes, there is no defense except through Consumer Co-operation. [120]

Beginnings

A ship plowing the Indian Ocean, carrying tea; another dipping through the choppy waves of the North Sea, bringing bacon; still a third nosing through the mists of the North Atlantic, loaded to the plimsoll line with wheat; a fourth coming up over the rim of the world, her hold bulging with wool, her cold storage full of butter—ships bound from far sundered lands to the mother-isle of Co-operation, that there Co-operative millions may be clothed and fed. Great warehouses where the ships come in. Mills where the grain is ground into flour, where the tea is made ready for use, where the wool is turned into thread and the thread into cloth.

(Testimony of George A. Barrett.)

This on the banks of the Mersey, where, in the great modern city of Manchester rises the vast business center of the English Co-operative Wholesale Society with its six million members in England and Wales alone. In Scotland, at Glasgow, stands its twin, the home of the Scottish Wholesale. Over in Ireland where the Irish Agricultural Wholesale Society began but yesterday (1918), they will tell you that the paid-in shares of the Co-operatives in Great Britain and Ireland amount to more than \$150,000,000. They will tell you that the investment of these great enterprises exceeds \$750,000,000.

Across the Straits of Dover are the Co-operatives of the Low Countries and France and Germany, and Central Europe; down in Egypt, in far-away India and Japan the movement is growing—Co-operatives fashioned after the Great Plan of the Pioneers, the Twenty-eight Weavers of Rochdale.

And all this in the brief span of one hundred years, out of nothing except the faith born in man that he is made for better ends than to be a slave—out of a belief that those who create the wealth of the world are intelligent enough to use that wealth to their own well-being and to the benefit of the rest of mankind.

No capitalist advanced the money that built the ships that bring home to England the bacon and the wool and the butter and the wheat. No bankers pooled their resources to pile, stone on stone the warehouses that tower above the Mersey. Out of

(Testimony of George A. Barrett.)

the penny here and the six-pence there and the shilling yonder, they were fitted together—just as the Co-operative stores and warehouses of America have been laid, board by board, and shingle by shingle out of Co-operative faith and practice.

—Hugh J. Hughes.

Additional copies of this folder may be obtained by writing this company, Caldwell; or send us names and addresses of persons you think would be interested and the folders will be mailed. [121]

The following paper was read at the annual meeting of the Co-operative Union Oil Company of Boise Valley by its manager, Geo. G. Barrett, and by resolution was ordered printed and distributed to the members:

Consumer Co-operation

The Consumer Co-operative Movement had its beginning among surroundings as humble and obscure as that of the Christian religion. Out of their bare necessity, the Twenty-eight Weavers of Rochdale wove an economic pattern that blends perfectly into the needs of humanity today. Amidst poverty and oppression, they formulated principles and precepts for a successful Consumer movement which has endured ninety years and has spread out over the whole world.

(Testimony of George A. Barrett.)

Consumer Co-operation was not born of selfishness and greed; nor is it nurtured by envy and hate. It glories not in the misfortune of those it supplants; but rather extends to all alike the brotherly hand of assistance. It is a revolution not either of ballots or bullets; but of quiet assimilation and growth. It progresses not by means of voluminous, misleading publicity; nor does maudlin sentiment have a place in its literature. Consumer Co-operation stands before the world tried by the fire of ninety years of relentless opposition and lays claim to the support of thoughtful men and women proved by the test of experience and sustained by logic and reason.

The Profit System Versus Co-operation. Periodically occurring "hard times," "depressions," "financial panics" and the accompany hardship, suffering and wretchedness of millions of people are the necessary and unescapable fruits of the profit system of economics. Consider for a moment a world in which there is only one industry, and further that this world is composed of just ten men. One of these men is the owner of a bakery and the other nine work for him. We will say that each worker produces each day four dollars worth of bread, but is paid only three dollars for his labor. The other dollars' worth of bread produced by each worker is the profit that goes to the owner of the bakery. The nine workers with their three dollar wages, obviously can purchase only three-fourths the output of the bakery. The owner has one-fourth of the entire

(Testimony of George A. Barrett.)

output as profit but his appetite is probably no greater than that of the workers and he cannot consume his portion of the output. Very shortly, an artificial surplus is created on account of the inability of the workers to repurchase their rightful or needful portion of the products of their labor. As the artificial surplus increases, the time comes when the bakery will have to close down and the nine men are out of employment.

Now let us move up beside and parallel with the bakery business, the steel industry, the boot and shoe industry, the clothing industry and every other industry of the human race, and we will find the same factors and conditions coming to pass. The workers—the consumers—creating a greater [122] wealth of commodities than they can repurchase with their income, and the owners unable to consume their portion of the products—the profit. Artificial surpluses are created in every line—factories, mill, and farms are shut down and men thrown out of employment—and again the cycle is complete and we have hard times and depression.

Farseeing men and women have said for a long time that there is no surplus; that the fault is lack of distribution, and they are right. But we have just shown that under the profit system faulty distribution can never be corrected, and artificial surpluses will always be created.

How different it would be under a Co-operative Consumers' Commonwealth! Going back to the

(Testimony of George A. Barrett.)

original example of one industry and ten men, we find that instead of nine workers and one owner, all ten of the men, as co-operators, would be owners and workers. They would receive back all the value of the products of their labor and no surplus would be created. Under a co-operative system, the profits are redistributed to the workers and consumers and those that create the wealth of the world would have the wherewith to buy back and repurchase all the products of their labor. With the purchasing power thus distributed back to the workers who create the wealth, never could too much of any good thing be produced. Periodic artificial surpluses could not occur.

Inventions and Discoveries. In these days we hear much of inventions, new discoveries and labor saving machinery as things of evil and that they are a curse to mankind. Under the profit system it is possible that mechanical progress be used for the enslaving of the workers and that condition has at least partially come to pass.

Under the profit system, a machine is installed in a factory that does away with four employees. Consider that each of these men have heretofore earned fifteen hundred dollars a year or six thousand dollars a year altogether. The installing of the new machine throws the four men out of employment and lessens the buying power of the community by six thousand dollars. The owner of the factory receives six thousand dollars more in profit,

(Testimony of George A. Barrett.)

but his appetite and consuming power is not, however, increased whatever. Therefore under our present system new inventions and machinery and discoveries are often used to aggravate the already fatal fault and weakness of the profit system. Under the co-operative system, the labor saving machine would be installed just the same, but the benefits of this machine would be distributed back to the workers and consumers. The buying power of the community would be unchanged. The only effect upon the community would be lessened hours of labor or greater output of the things humanity demands.

It is impossible for the human race to produce more than the human race can consume under a proper system of distribution. Human wants and desires must continually exceed and out-distance the ability of the human race to produce. Labor saving [123] machinery which under the profit system might, and sometimes does become a curse to the human race, under co-operation becomes a God-given blessing.

The Creator did not condemn mankind to misery and want. Rather He made of the earth a plentiful garden wherein was the fulfillment of every human need. Poverty and want are the creation of man and are the creatures of selfishness and greed. Man, "created in the image of God," and endowed by his Creator with the faculties of thought and invention may yet again regain the "Paradise Lost."

(Testimony of George A. Barrett.)

The Consumer and Industry. It can readily be shown that under the profit system, the consumers of the world buy out all industry every four years, and then give it back. Estimating the net profit of the manufacturer, the net profit of the jobber and the net profit of the retailer, all combined to equal twenty-five per cent of the selling price; then the consumer pays sufficient, in addition to the actual cost of the goods, to buy out all industry every four years. And at the end of the four years, they have nothing whatever to show for the profit that they have paid in upon each purchase they have made.

Under the co-operative system, consumers would retain or be given back as patronage dividends all these profits and it is theoretically possible in the four year period for consumers to own all industry. Coming nearer home and taking for example our own oil company here, we can begin to see the possibilities of consumer co-operation. Beginning without capital, without facilities, without knowledge or experience of the industry, your oil company has been able in the short period of twenty months to make savings to ourselves of nearly thirty thousand dollars which now belongs to each of us proportionately to each of our purchases. Had our company not been operating, this large sum of money would now be in the pockets or bank accounts of those who grow rich through profits. The purchase of petroleum products and automobile accessories is only one small avenue of our expenditures. Suppose we were

(Testimony of George A. Barrett.)

saving these profits on all our expenditures, and consider further that we were to advance to the extent of manufacturing and producing as well as jobbing and retailing—then the possible benefit of consumer co-operation becomes a field of vast proportions.

Freedom. No one must be compelled to join a co-operative and likewise no one should be compelled to remain a member of a co-operative if or when he becomes dissatisfied or antagonistic. Governments of States or Nations cannot successfully initiate co-operative organizations. The very fact of their prerogative to compel their subjects to become members and to obey their dictates, is entirely foreign to co-operative principles. Communism and Fascism have the inherent weakness that they destroy individual liberty. Government ownership and government control likewise are subversive of the spirit of freedom. These governmental experiments trying to solve the problem of modern economics tend to build up vast overhead expenses; to create great [124] bureaus of unnecessary employees and finally lead to dictatorship and autocratic domination of the people. Communism and Government ownership take away the right of private property and make the human being simply a creature or pawn of the State.

Co-operation on the other hand glories in individual freedom; in economies of administration; in democratic control and ownership by the people

(Testimony of George A. Barrett.)

themselves. In the Co-operative Commonwealth there is no limit to the amount of private property one may own or accumulate just so long as it is secured through the individual's own social or productive labor. Great fortunes as we have them today which have been accumulated through profit on other men's labor, through gambling upon the Board of Trade or through manipulations of stocks and bonds—blood money, wrung from the labors of weaker or more unfortunate brothers, or coined from the heartaches and want and destitution of fellow men—cannot continue to exist under a co-operative system. Under co-operative principles, labor regains nobility; ambition and tireless application to one's duties, thrift and frugality, all again become exalted virtues.

Co-operation Supreme. Co-operation is the greatest and most important economic principle in the world today. True co-operation is religion for it is essentially the embodiment of the Golden Rule. "Whatsoever ye would that men should do unto you, do ye even also unto them" is the rock upon which is built the co-operative superstructure. It is government, and would put back into the hands of the individual the power to control. In this world of "poverty amidst plenty" it would provide for all men sufficient for comfort and happiness. It would destroy the monster of selfishness and greed; war and strife between nations would be abolished from the face of the earth. It would retain the principles

(Testimony of George A. Barrett.)

of private property but would eliminate desire or need to commit crime or cause suffering in order to amass wealth. It would release the genius of the race to solve the problems of the world—to discover new lessons of truth and to make life happier and more comfortable. Through perfect co-operative distribution of the commodities of the world, all men able and willing to work, may have everything desirable for comfort and happiness.

Those of us who are thus early in the Consumer Co-operative Movement are indeed fortunate. We are in the vanguard of a movement for humanity which is sweeping across the nation like a prairie fire before the wind. Ours is the opportunity to use our talent and best endeavor in a cause which is destined to mean more to humanity than anything that has come to pass since the beginning of the Christian era. The need of the hour demands strong, intelligent, active men and women. No army ever marched to war in a more sacred cause. [125]

(Testimony of George A. Barrett.)

Twenty Months Old
 Patronage Dividends have been paid
 amounting to \$10,033.58.
 Operations from April 7, 1933 to
 November 30, 1934:

Sales:

Gasoline	\$269,257.24
Oil and Grease.....	32,429.77
Tires and Tubes.....	13,474.77
Accessories	4,334.93
	<hr/>
Total Sales	\$319,496.71
Cost of Goods Sold.....	250,345.02
	<hr/>
Gross Trading Savings.....	\$ 69,151.69
Add Other Revenue.....	6,062.69
	<hr/>
Total Gross Savings.....	\$ 75,214.38
Deduct Expenses	46,357.65
	<hr/>
Net Savings to Members 20 Months	
Ending November 30, 1934.....	\$ 28,856.73

Are You a Member?

Becoming a member of this Company you join hands and purpose with seventy-one million Co-operators distributed through forty-one nations of

(Testimony of George A. Barrett.)

the world. These millions demand that commodities and money be devoted to Use and not to Profit.

Stations

Caldwell Nampa Meridian Boise Kuna
Parma Wilder Huston Ustick

[Endorsed]: Petitioner's Exhibit No. 8. Admitted in evidence Nov. 7, 1938. [126]

“Petitioner's Exhibit No. 6 is a copy of the audit of Petitioner's operations covering a period from November 1, 1934, to October 31, 1935, by James Munro, a certified public accountant of Boise, Idaho.

(The said Exhibit 6 was offered for the purpose of disclosing what the books showed and to show the explanation of the auditor therein, who was not present to testify.)

“On page 2 in Exhibit A in Petitioner's Exhibit No. 6, under ‘Liabilities,’ referring to the item, ‘Reserve for working capital,’ the latter item I identify as the one heretofore referred to by me as showing the savings belonging to the members. During the period from December 31, 1933, to October 31, 1934, the same account was kept as a reserve showing savings of Petitioner's members. On the same page of Petitioner's said Exhibit No. 6 there is also a reserve for contingencies, obsolescence and exten-

(Testimony of George A. Barrett.)

sions. This is the only reserve set up by the Board of Directors by action of resolution. It is the only one that appears in the Minutes. [35]

(Cross-examination)

“Petitioner’s business was the sale of gas, oil, tires and accessories, and such sales were also made to persons not members of Petitioner. Records were also kept of sales to non-members, but instead of having a folder for each non-member as we did for members, they were grouped together as non-member business. There was some record kept as to sales to each non-member. Non-members were not required to execute the contract, such as Petitioner’s Exhibit No. 5. No savings were paid back to non-members. At various times Petitioner’s Board of Directors passed a resolution releasing some of the savings to members. I think these resolutions took the form of a declaration of dividend. Of course, the terminology was rather loose. No money was actually paid to members other than pursuant to resolutions of the Board of Directors.

“Referring to Petitioner’s Exhibit No. 6, the item, ‘Reserve for working capital,’ appearing in Exhibit A thereof, does not represent cash, excepting in part, it is merely a bookkeeping entry. No resolutions were adopted by the Board when entries were made in the reserve for working capital. Folders were kept containing sales tickets for each member, but no accounts were set up in the general

(Testimony of George A. Barrett.)

ledger showing any amounts contained in the account, 'Reserve for working capital,' as to each member. No accounts were set up on the general ledger for members of Petitioner showing any allocation of the [36] amount in the account, 'Reserve for working capital,' but Petitioner did have the total, the purchases of each member and for each year, and from a balance sheet the equity of each member was determined. In addition to a folder for each member, Petitioner also had work sheets which went into the general ledger or books of Petitioner. When I refer to savings being paid from time to time I meant savings were released pursuant to resolution of Board of Directors.

(Redirect examination)

"With reference to the item to which I refer above as 'Reserve for working capital,' this item was set up by the accountant as surplus reserve for working capital, and in some instances as reserve for future dividends. It was not a reserve at all. It was merely liability account, carried as a liability on our balance sheet—as a liability to our members. This item, 'Reserve for working capital,' evidences the savings due Petitioner's members. These savings were kept all in one account, the name being sometimes changed. At the end of a year the accountant takes the members' folders and totals each member's purchases and what is on the work sheets

(Testimony of George A. Barrett.)

that I mentioned above. Of course, any time, by taking the net profit, we could determine each member's equity in these savings; that is, as shown in the savings.

“As to non-members, we paid the tax on their savings and then such savings were distributed to members, the same as if they had been savings, and included in the account re- [37] ferred to by me as belonging to the members, thus included in the share that each member would get out of all the savings.

“A membership certificate would be issued to a member for one dollar. No interest or dividends were ever paid on any membership certificates.

“Now, referring again to the reserve and work sheets that we had, and heretofore mentioned, various members would at various times call upon us and ask how much of this account or savings in this reserve belonged to them or was due them. We would take in the work sheet and see their other purchases and from our ledger we would note the percentage. For instance, if a member traded \$100.00 worth and had a saving of ten per cent, he would have \$10.00 coming. That is the amount we would tell the member Petitioner owed him out of this so-called reserve. This was true during both years involved in this matter.

(Recross Examination)

“Probably twice a year during both years releases and additions were made to this reserve ac-

(Testimony of George A. Barrett.)

count. About once a year we would figure out the proportion which the business of non-members bore to the total business. When members at various times inquired as to how much in the reserve for working capital belonged to them at a particular time we could only answer the question up to the end of the fiscal year. [38] Anything beyond that would be an estimate. We wouldn't attempt to answer the members correctly, except up to the end of the fiscal year, where it had been determined. If someone wanted to know we might give him an estimate:

“ ‘Our non-member business was so much last year and that much deducted and the earnings were so much last year; it is probable you will have something like this. * * * ’ ”

“Q. I don't believe you stated whether or not a resolution was necessary to be adopted by the Board of Directors in order to pay moneys representing these savings to non-members. Is that a fact, Mr. Barrett?

“A. Actual paying of money, no actual resolution of the Board of Directors was necessary for proportioning the savings to the members. We did consider the releasing of funds usually required action of the Board of Directors.

“Q. Your testimony I believe was that no savings were paid to non-members?

“A. Yes.”

(Testimony of George A. Barrett.)

(Redirect Examination)

“We consider that any member at any time could find out what proportion of these savings for the years involved in this matter belonged to him, and previous to the time that any assessment was made involved in this matter, the members were actually notified, each one individually, [39] of the proportion of savings that they had in Petitioner. These savings were computed and figured as I have heretofore testified, based upon each year.”

C. W. MONLUX,

a witness on behalf of Petitioner, testified as follows:

(Direct Examination)

“I am a member of the Board of Directors of Petitioner and chairman of such Board. As a part of my duties I go out among members and solicit memberships. I did this during the taxable period involved in this matter. I stated to them the mechanics of the operation of Petitioner, stating generally that our organization was based upon the principal of memberships taken out or sold with the idea that when members bought merchandise the savings they effected from patronizing their own organization would be released to them from time to time as occasion arose. We were very definite in explaining to the members that the savings could not belong to any one except the members, and would be paid to the members from time to time.

(Testimony of C. W. Monlux.)

(Cross Examination)

“No member received any payment representing savings without a prior resolution adopted by the Board of Directors and when such resolution was adopted the amounts [40] were paid through the resolution to the members. We always held back that part that we needed toward the capital but no other amounts were paid unless further resolutions were adopted by the Board of Directors.

(Redirect Examination)

“These releases, as I have called them, of sums to members, were simply the amounts which were not necessary in the use of the operation of Petitioner in connection with its business; we held back money enough so that when a member made a purchase we would have money to replace that purchase with other merchandise.

(Recross Examination)

“No interest was credited or allowed members in respect of any amounts standing in this reserve account to which I have been referring.”

Dated this 22nd day of Nov., 1939.

WALTER GRIFFITHS

Residence: Caldwell, Idaho,

J. L. EBERLE

Residence: Boise, Idaho,

Attorneys for Petitioner.

[Endorsed]: Lodged Nov. 24, 1939. Filed Nov. 28, 1939. [41]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 128, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 6th day of Dec., 1939.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

[Endorsed]: No. 9393. United States Circuit Court of Appeals for the Ninth Circuit. Co-operative Oil Association, Inc., an association, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed, December 14, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals,
for the Ninth Circuit

No. 9393

CO-OPERATIVE OIL ASSOCIATION, INC.,
an association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS

Comes now Petitioner and appellant herein and makes this concise statement of points on which it intends to rely on the appeal herein, to wit:

Those certain designations of error contained in the Petition for Review and being paragraph IV, and subparagraphs numbered 1 to 9 inclusive, designated, "Assignments of Error," all of which are hereby adopted and incorporated as fully as if set forth at length herein, as the points and assignments of error of said Petitioner on appeal.

WALTER GRIFFITHS

Residence: Caldwell, Idaho

J. L. EBERLE

Residence: Boise, Idaho

Attorneys for Petitioner

Service acknowledged and copy received this.....
day of January, 1940.

.....
Chief Counsel,
Bureau of Internal Revenue.

[Title of Circuit Court of Appeals and Cause.]
DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED

Comes now Petitioner and appellant herein and designates the following portions of the record herein to be printed under Rule 19, to wit:

1. Pleadings:

- (a) Petition for redetermination.
- (b) Answer of Respondent.
- (c) Petitioner's reply.

2. Petition for review filed by Petitioner in the above cause.

3. Statement of the evidence, and only the following portions of Exhibits, to wit:

(1) The following portions of Exhibit No. 1, being Petitioner's Articles of Incorporation, to wit:

(a) Opening paragraph, preceding Article I.

(b) Subparagraphs (a) and (1) of Article II.

(c) Article V.

(d) Article IX.

(2) The following portion of Exhibit No. 2, being Petitioner's tax return; to wit:

"The reserves for working capital of \$10,040.51 is composed of \$1,042.81 savings on non-member business and \$8,997.70 savings on members business and will be distributed at some future date."

(3) The following portions of Exhibit No. 4, being Petitioner's By-Laws, to wit:

(a) Section 1 of Article III.

(b) Sections 4, 6, 8, and 11 of Article VIII.

(c) Section 1 of Article IX.

(d) Article X.

(e) Article XI.

(4) All of Exhibit No. 5—Marketing Agreement.

(5) All of Exhibits Nos. 7 and 8.

WALTER GRIFFITHS

Residence: Caldwell, Idaho

J. L. EBERLE

Residence: Boise, Idaho

Attorneys for Petitioner

[Title of Circuit Court of Appeals and Clause.]

AFFIDAVIT OF MAILING

State of Idaho,
County of Ada—ss.

Margaret W. Burt, being first duly sworn, upon oath deposes and says:

That she is a citizen of the United States and of the State of Idaho, over the age of 21 years, and is not a party to and is not interested in the above action;

That on the 6th day of January, 1940, she deposited in the United States Post Office at Boise, Idaho, in an envelope securely sealed, with postage prepaid thereon, one copy of statement of points, in the above entitled matter, together with one copy of designation of portions of record to be printed, in said matter, addressed and directed to:

J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

MARGARET W. BURT

Subscribed and sworn to before me this 6th day of January, 1940.

[Seal]

J. L. EBERLE

Notary Public for Idaho,
Residing at Boise, Idaho.

[Endorsed]: Filed Jan. 8, 1940. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

COUNTER-DESIGNATION OF ADDITIONAL
PORTIONS OF RECORD TO BE PRINTED

Comes now the respondent in the above-entitled cause and designates the following additional parts of the record herein for printing under Rule 19, to wit:

1. Findings of fact, opinion and decision of the Board of Tax Appeals.

2. The following portion of Exhibit No. 1, being petitioner's Articles of Incorporation, to wit:

Subparagraph (j) of Article II.

SAMUEL O. CLARK, JR.,

Counsel for Respondent

[Endorsed]: Filed Jan. 20, 1940. Paul P. O'Brien,
Clerk.

